

**EXHIBIT 9**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: )  
RESIDENTIAL CAPITAL, LLC, ) Civil Action No.  
et al., ) 12-12020 (MG)  
Debtors, )  
 )  
----- )

CONFIDENTIAL DEPOSITION OF JEFFREY A. LIPPS

New York, New York

Tuesday, July 23, 2013

Reported by:  
JOMANNA DeROSA, CSR  
JOB NO. 64088

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2 Monarch, Stonehill, Bayview, and CQS.

3 Q. Mr. Lipps, do you understand that  
4 your Declaration that was filed with the Court in  
5 connection with Debtors 9019 motion pursuant to  
6 Federal Rules of Bankruptcy Procedure 9019 for  
7 approval of the Settlement Agreement among the  
8 Debtors FGIC, the FGIC trustees, and certain  
9 institutional investors has been resubmitted by  
10 Debtors in connection with my clients' objections  
11 to the 9019 motion?

12 A. Are you just asking me if I filed a  
13 Declaration?

14 Q. I'm asking if you understand that  
15 that Declaration has been submitted as an Expert  
16 Declaration in connection with the objections to  
17 the 9019 motion?

18 A. I understand my Declaration has  
19 been filed in connection with the 9019.

20 Q. And, Mr. Lipps, can you tell us  
21 what your expert qualifications are?

22 A. Well, I think I've set forth in the  
23 Declaration my experiences. For purposes of the  
24 opinions that I'm offering here, I think my  
25 qualifications are based on my experience as a

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2 commercial litigator for now 32 years. The last  
3 three years of which -- or I guess two years  
4 before the filing of the bankruptcy and the year  
5 after I have been actively involved with respect  
6 to RMBS securitizations, and rep and warranty  
7 claims, as well as PLS claims. So, I have had  
8 substantial experience in the area.

9 And as part of my ongoing  
10 assistance with the Debtors' counsel, I continue  
11 to stay abreast of what is developing in the law  
12 with respect to the legal issues, and I have  
13 direct experience in terms of representing the  
14 Debtors and some of the non-Debtors pre-petition  
15 in these cases, and have a very good understanding  
16 of what the complexities are in terms of the  
17 discovery that will be encountered, as well as the  
18 legal issues that you have to confront in these  
19 kinds of claims.

20 Q. So, is it fair that you have  
21 submitted a Declaration as an expert in the  
22 litigation of complex commercial disputes with  
23 specific subject matter expertise in the body of  
24 law that is developed in disputes regarding the  
25 sale of residential mortgage-backed securities or

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2 A. I joined a firm then called Frost &  
3 Jacobs in Cincinnati, and did litigation for them  
4 for about six years, and then Jones Day extended  
5 me an offer to move from Cincinnati up to  
6 Columbus, and I began handling litigation in the  
7 Columbus office nationally for Jones Day until  
8 1994 when I left and started what's now Carpenter  
9 Lipps & Leland.

10 Q. And that's where you are currently?

11 A. Correct.

12 Q. And when was the first time, for  
13 any entity, that you were involved in an RMBS  
14 litigation?

15 A. It would be in March or April of  
16 2010. I was hired to represent the RFC entity in  
17 the MBIA case, the GMAC Mortgage entity in the  
18 MBIA case, and then ResCap and the various  
19 affiliates involved in the securitizations at  
20 issue in the New Jersey Carpenters suit.

21 MS. JAMES: I'm handing to the  
22 Court Reporter a document to mark as Exhibit  
23 1. And I'll state for the record that this  
24 document was filed in the bankruptcy case,  
25 Docket No. 3929-4, and it's captioned

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2 mean the period of time before ResCap filed its  
3 Chapter 11 petition?

4 A. It would have been prior to May  
5 14th.

6 Q. 2012?

7 A. 2012.

8 Q. At the time that those cases were  
9 stayed, what progress had been made in connection  
10 with discovery?

11 A. Nothing. We hadn't even answered.

12 Q. So, there was no progress in  
13 connection with the FGIC claims or the FGIC  
14 lawsuits?

15 MR. KERR: Objection.

16 MS. JAMES: I'll rephrase it.

17 That's fair.

18 Q. There had been no progress as to  
19 discovery in connection with the FGIC lawsuits  
20 filed against Debtors?

21 A. That's probably fair. I know under  
22 the Federal Rules you can't start discovery until  
23 after you have your Rule 16 conference, as I  
24 recall, and we were going to test the pleadings in  
25 various regards with a Motion to Dismiss was our

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2 plan at the time, and under Judge Crotty's  
3 procedure we had to send a letter and get -- and  
4 go through a pre-motion conference. And that's  
5 what I referenced before that had been continued,  
6 as I recall, prior to May 14th.

7 Q. If you look at Paragraph 7 of your  
8 Expert Declaration, you write that:

9 "I currently represent or have  
10 represented, over the past several years, a number  
11 of the Debtor entities, including Residential  
12 Capital, LLC, Residential Funding Co., and GMAC  
13 Mortgage, LLC."

14 And then you say:

15 "Four non-debtor affiliated  
16 entities."

17 What do you mean -- what are the  
18 names of those non-Debtor affiliated entities that  
19 you refer to in Paragraph 7?

20 A. AFI, Ally Financial, GMAC Holding,  
21 Ally Bank, and what's now called Ally Securities,  
22 the broker-dealer. Those are the four entities  
23 that at different times in different suits I had  
24 represented them.

25 Q. And although these entities are not

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2 claims, no.

3 Q. If I can ask you to take a look at  
4 paragraph 14 of your declaration, and I'm looking  
5 specifically at the end of that paragraph where  
6 you write, "It is my opinion that the settlement  
7 of the claims and liabilities released by the FGIC  
8 Settlement Agreement would remove a significant  
9 risk of an unfavorable legal outcome and the  
10 necessity of incurring the significant expense of  
11 litigating these claims to final resolution."

12 Did I read that correctly?

13 A. You did.

14 Q. What do you mean when you say  
15 "would remove a significant risk of an unfavorable  
16 legal outcome"?

17 A. Well, I believe that the claims and  
18 liabilities released by the FGIC Settlement  
19 Agreement were expressed in quite a few proofs of  
20 claims that were filed by both the trustees and  
21 FGIC that would have necessitated resolution  
22 through some contested proceeding, if you didn't  
23 have a settlement.

24 Q. Referring to the claims brought by  
25 FGIC against the Debtor-related entities, the



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2 suits filed by FGIC against the Debtor, regarding  
3 reps and warranties, what's your understanding of  
4 the amount of those claims?

5 MR. KERR: So I'm clear, are you  
6 talking about pre-petition claims?

7 MS. JAMES: I am. I apologize. I  
8 shouldn't say Debtor. Against ResCap and  
9 ResCap-related entities.

10 A. I don't think they were quantified  
11 a dollar amount. I don't think we were at that  
12 point.

13 Q. What was your understanding of the  
14 exposure of ResCap and ResCap-related entities  
15 under these claims?

16 MR. KERR: Objection.

17 THE WITNESS: Can I hear that  
18 again?

19 (The requested portion of the  
20 record was read.)

21 A. Again, I don't know that I ever got  
22 to the point in that case where we quantified  
23 anything that would allow me to answer that  
24 question other than to indicate that I knew there  
25 were 20 some securitizations that were at issue,

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2 and I can't remember at this point what the total  
3 outstanding was on it.

4 You know, FGIC wasn't just pure rep  
5 and warranty claims. They were also asserting a  
6 number of tort claims, and they were asserting  
7 aiding and abetting claims and trying to pierce  
8 the corporate veil. So from the standpoint of  
9 where I sat when I was defending those  
10 pre-petition, we were just basically looking at in  
11 terms of initial outstanding balances on the  
12 securitizations was the outer limits of what we  
13 were doing. Plus, I guess, punitive damages if  
14 somebody could prove a fraud claim.

15 Q. In your expert declaration where  
16 you write that the "settlement of claims and  
17 liabilities released by the FGIC Settlement  
18 Agreement would remove a significant risk," you're  
19 not opining as to the monetary amount associated  
20 with that risk?

21 A. What I evaluated was the claims  
22 that were being asserted or would be asserted --  
23 actually, let me step back.

24 What I was evaluating was the  
25 claims that were being released, and I did have

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2 knowledge of both the claims that had been  
3 asserted in the complaints, as well as the proofs  
4 of claim, and that is what I was looking at in  
5 terms of complexity in offering my opinion on  
6 that.

7 Now, there is a little bit of a  
8 monetary component because I know what the burdens  
9 were in terms of the expense associated with  
10 defending a claim. So to an extent, I am offering  
11 some view on cost associated with defending these  
12 claims. But as to the settlement of the legal  
13 outcome, no, I'm not opining as to a specific  
14 dollar amount.

15 Does that answer what you asked?

16 Q. It does. I'm going to ask you a  
17 few more questions, if I may. You just said that  
18 you had knowledge of the claims asserted in the  
19 Complaint, as well as the proofs of claim.

20 Are you aware of the aggregate  
21 amount of those claims asserted in the Complaint,  
22 as well as the proofs of claim?

23 A. Again, I'm not sure an aggregate  
24 amount was put in the Complaint, but the proof of  
25 claims, obviously, had an aggregate amount. For

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2 some reason, I can't remember the exact amount,  
3 but it may be somewhere -- I want to say the  
4 trustees were asserting claims around eight  
5 billion maybe, and five billion was the amount  
6 being asserted by FGIC, but I could be off on  
7 that. I just know there's a lot of claims that  
8 have been filed that aggregate into numbers that  
9 were at least north of a billion.

10 Q. Going back to your declaration,  
11 your second opinion, which is captured in bullet  
12 point two on page 2, you discuss the expense of  
13 resolution of the claims and liabilities covered  
14 by the FGIC Settlement Agreement, and you opine  
15 that resolving those claims would be, and I'm  
16 quoting, "enormously expensive."

17 Did you put a dollar figure on the  
18 expense associated with resolving the claims and  
19 liabilities covered by the FGIC Settlement  
20 Agreement?

21 A. I don't think I've ever attached a  
22 specific dollar figure to it.

23 Q. And when you wrote "enormously  
24 expensive," did you have a dollar figure in mind?

25 A. No, there's not a dollar figure

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2 attached to the use of enormous. It's my  
3 midwestern style.

4 Q. In considering the concept of the  
5 resolution of claims being "enormously expensive,"  
6 did you consider that the potential losses that  
7 may be incurred by the Debtors, ResCap and its  
8 related entities, if it were to lose the cases  
9 brought by FGIC?

10 MR. KERR: Objection.

11 A. Well, I was aware of what was being  
12 claimed in the proofs of claim, and I was also  
13 aware of what the outer limits were of -- outer  
14 limits based on the securitizations.

15 I think in one of the complaints,  
16 just by way of example, FGIC asserted there was a  
17 97 percent breach rate. So you could basically  
18 take the initial outstanding balance and take 97  
19 percent of that and say that's the outer limit if  
20 they're right and they hit. So to that extent,  
21 yes, I was taking into account the outer limits of  
22 exposure that could happen.

23 Q. Could you turn to paragraph 134 of  
24 your declaration? And paragraph 134 appears under  
25 a heading Outcomes in Other Monoline Litigations.

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2 Q. Other than those two things, what  
3 else? Just let me know.

4 MR. KERR: Objection.

5 A. Do you want me to read through the  
6 qualifications for you? Look, I've been  
7 litigating RMBS-related claims since 2010 for the  
8 Debtors, former officers and directors, and  
9 certain affiliated non-Debtor entities. I've been  
10 a litigator in commercial matters for 32 years. I  
11 understand as a result of that experience how  
12 cases proceed from filing to ultimate disposition  
13 either by way of settlement or trial with appeals  
14 involved in it. You have to take it into account  
15 when you're trying to assess legal uncertainties.

16 I have firsthand experience in  
17 litigating in the RMBS context for the Debtors a  
18 number of the issues that are presented in my  
19 analysis. I've looked at what other courts have  
20 done in other cases on those issues. I've tried  
21 to understand what the distinctions were between  
22 them, and I can only do that by virtue of my  
23 experience as a litigator and my experience as  
24 somebody specifically on this.

25 I've looked at and lived with for

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2 FGIC settlement. You're free to testify about  
3 that. That's fine.

4 Q. What did anybody tell you about  
5 what the assignment was?

6 A. I had already offered a Declaration  
7 that related to the RMBS Trust Settlement. So, I  
8 had an expectation going in that they would want  
9 me to look at uncertainties, risks associated with  
10 those claims that were being resolved in the  
11 settlement, and I had an expectation that they  
12 would ask me to offer some opinions related to the  
13 costs associated with it.

14 So, going in I had the expectation  
15 that they wanted me to look at the settlement,  
16 look at the claims that were being released, and  
17 advise them as to whether I could offer some  
18 opinions related to that.

19 What I didn't know is whether or  
20 not they wanted me to offer an opinion on range of  
21 reasonableness or things like that, and in the  
22 best interest. And ultimately I did not include  
23 that in the report. I certainly have some views  
24 on it.

25 Q. Did they ask you to provide opinion

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2 testimony on range of reasonableness?

3 A. No.

4 Q. And what about best interests?

5 A. No. They asked me to offer the  
6 opinions I could offer on the matters that I  
7 identified.

8 Q. And did they tell you anything else  
9 at that meeting about what the scope of your  
10 assignment was?

11 A. No, I don't think they ever really  
12 told me what the scope of the assignment was. I  
13 think we identified the issues that they felt  
14 opinion testimony would be helpful on in the  
15 context of the 9019, and I defined the scope of  
16 what I was going to do from that point going  
17 forward.

18 Q. And did they tell you what the  
19 timing was for the assignment?

20 A. I seem to recall under the  
21 Settlement Agreement there was a need for a  
22 filing, June 7th.

23 Q. And did you express any concerns at  
24 that meeting with respect to whether you would  
25 have enough time to form your independent opinions



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2 A. I have been involved since I've  
3 been special counsel in consulting with Morrison  
4 and Foerster regarding discovery plans that would  
5 be associated with potential challenges to proofs  
6 of claim.

7 Q. Anything related to RMBS claims?

8 A. That would be what I was dealing  
9 with was PLS and -- or private label securities  
10 claims by security holders and RMBS.

11 Q. And what was your role in those  
12 discussions?

13 A. Meetings and discussions with them  
14 and sharing the experiences and advice that I have  
15 and providing recommendations on types of  
16 discovery to pursue against RMBS and/or PLS proof  
17 of claim claimants and assessing whether we file  
18 an adversary and seek discovery in that context or  
19 whether we try and do it informally or through a  
20 2004.

21 Q. Other than as special counsel to  
22 the Debtors, have you ever been involved in  
23 preparing a discovery plan for the litigation of a  
24 proof of claim?

25 A. The only other context that I could

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2 Q. When was the first time you  
3 reviewed the claims that either FGIC or the FGIC  
4 wrapped trust asserted against ResCap, LLC?

5 A. When was the bar date? Probably  
6 about the bar date.

7 Q. And what do you understand to be  
8 the nature of the claims that those entities have  
9 asserted against ResCap, LLC?

10 A. I understand them to be in the  
11 nature of aiding and abetting and piercing the  
12 corporate veil.

13 Q. And do you understand alter ego  
14 claims might also have been asserted?

15 A. Yes, alter ego. I'm sorry I think  
16 of piercing --

17 Q. Sure.

18 Did you perform any analysis of  
19 those claims in connection with forming the  
20 opinions you expressed in Lipps No. 1?

21 A. I did not get down into an  
22 allocation and an assessment of allocation at  
23 various entity levels. I was looking at the  
24 aggregate. I was looking at the aggregate of the  
25 claims that were being released. But, I mean, I

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2 have at different times looked at aiding and  
3 abetting claims, alter ego, piercing the corporate  
4 veil.

5 Q. As they relate to claims asserted  
6 by RMBS claimants against ResCap, LLC?

7 A. Yes.

8 Q. I'm going to come back to that in a  
9 second. With respect to Lipps No. 1, though, you  
10 note in footnote No. 3 that the underlying fraud  
11 claims and misrepresentation claims are beyond the  
12 scope of your report. Right?

13 MR. KERR: Objection.

14 A. I don't know that I said they're  
15 beyond the scope of it. I think I said I could  
16 look at the riskier claim, the rep and warranty  
17 claim, at least I think that's the way I described  
18 it, and support my conclusion with an analysis of  
19 that.

20 Q. Okay. And so did you perform any  
21 analysis of any tort-based claims in forming the  
22 opinions expressed in Lipps No. 1?

23 A. Beyond what I put in that footnote,  
24 no.

25 Q. And you don't mention aiding or

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2 abetting, piercing the corporate veil or alter ego  
3 anywhere in Lipps No. 1. Why is that?

4 A. For purposes of offering my  
5 opinion, I didn't need to concern myself with  
6 allocation between the various entities.

7 Q. Why do you say that?

8 A. I was more interested in what  
9 claims were being released and who was being  
10 released of those claims. And as I understood it  
11 ResCap, GMAC Mortgage, RFC were receiving releases  
12 from FGIC of all claims that they could have  
13 against them and from the trustees on the  
14 origination-based claims.

15 Q. Do you express anywhere in Lipps  
16 No. 1 your views of the costs for ResCap, LLC, to  
17 litigate aiding and abetting, piercing the  
18 corporate veil and alter ego claims?

19 A. I did not specifically isolate  
20 costs associated with litigating those issues.

21 Q. And do you express anywhere in  
22 Lipps No. 1 any risks associated with ResCap, LLC,  
23 litigating aiding and abetting, piercing the  
24 corporate veil and alter ego claims?

25 A. Yes, I would say I do.